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In the Supreme Court of the United States

OCTOBER TERM, 1957.

No. 183.

TOMMASO ARGENTO,
Petitioner,

vs.

HERBERT A. HORN, *et al.*,
Respondents.

PETITION FOR REHEARING.

HENRY C. LAVINE,
1000 Marshall Building,
Cleveland, Ohio,
Attorney for Petitioner.

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HERBERT A. HORN, *et al.*,

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PETITION FOR REHEARING.

Now comes the undersigned attorney for the petitioner and presents this, his petition for a rehearing of the above-entitled cause, and in support thereof respectfully states:

That the petition for a writ of certiorari in this case was denied by this Court on October 14th, 1957, and this petition for rehearing is therefore timely.

That there is such a total lack of evidence on identification of this petitioner in the extradition proceedings, that to order him removed on the evidence presented would amount to a probable miscarriage of justice.

Counsel realizes that the identification question was not raised in the lower courts and that counsel relied mainly on the treaty question, which was briefed and argued in both lower courts as well as in this Court.

Present counsel raised the question of identification in this case for the first time in the petition for a writ of

certiorari, and now fears that because this question was raised for the first time in this Court, the court probably refused to entertain it on the ground that it should have been raised in the lower court.

Counsel agrees that it should have been raised in the District Court to give the District Court the opportunity to rule upon it for determination of that question, and that if the ruling were adverse it then would, of course, have been properly appealed to the Appellate Court for its determination.

It is respectfully represented to this Court, however, that the question of identification is so important in this case that counsel feels we should again attempt to call this Court's attention to what we consider is an improper attempt at identification of a man who is being extradited to serve a life sentence in Italy. We hope to interest this Court in realizing that to obtain three affidavits from people in Italy, who have not seen this petitioner for thirty years, is highly improper and unfair and these affidavits constitute all of the identification. The least that could have been done by the Italian Government, or its counsel here, would be to have brought to the United States personally, a person or persons who would confront the petitioner in open court and there identify him as the man who was tried in absentia in Italy. If that would have been impossible, although we do not know why such an eventuality could have presented itself, the very least that should have been expected was a deposition, after notice to the adverse party to attend such place or places where such identification would be made by these witnesses, to afford the chance to cross examine the witnesses and to ascertain how the identification was made.

As we pointed out in our petition for a writ of certiorari, if a neighboring state would want to extradite a person for even a minor criminal charge, that state would send a witness, or witnesses, who would then have to identify the prisoner as being the person the Grand Jury had in mind when it returned an indictment. If that be true on a minor criminal charge, how can anyone accept a lesser manner of identification than what is demanded from a neighboring state? Why should we throw away the safeties and protections that we have followed in our courts in extradition cases and totally disregard the rights of an individual merely because the request for extradition comes from a foreign government? What appears to have been done here as effecting the identification of this petitioner is, that someone in Italy wrote out three statements, exactly alike, which purport to identify the petitioner as being the person who was tried in Italy, in absentia, twenty-five or thirty years ago. All the identification consisted of is an assertion in the sworn statements made in Italy that this identification is being made from a blown-up photograph of a man whom the affiants haven't seen for thirty years.

We think this is improper and that no extradition should have been ordered merely upon that type of identification. Also, because of our fear that this Court has refused to entertain the petition for a writ of certiorari because that particular question was not raised in the lower court, we feel that we are in duty bound to call this Court's attention to what probably amounts to a grievous error because it prevented this man from having a fair trial in the lower court.

Because of that, we respectfully urge this Honorable Court to grant the petitioner a rehearing on his petition

for a writ of certiorari, mainly on the question of improper identification which prevented the petitioner from having a fair trial.

Respectfully submitted,

HENRY C. LAVINE,
1000 Marshall Building,
Cleveland 13, Ohio,
Attorney for Petitioner.

Certificate of Counsel.

I, the undersigned counsel for the petitioner in the above-entitled cause, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

HENRY C. LAVINE,
Attorney for Petitioner.